

(1993) 07 SC CK 0045

In the Supreme Court Of India

Case No : Election Petition No. 3 of 1992

Kaka Joginder Singh alias Dharti Pakad

APPELLANT

Vs

K.R. Narayanan, Vice-President of India

RESPONDENT

Date of Decision : 16-07-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 171C

Presidential and Vice-Presidential Elections Act, 1952 — Section 18(1)(a), 18(1)(c)

Representation of the People Act, 1950 — Section 13D, 15

Citation : (1993) 4 JT 163 : (1993) 3 SCALE 85 : (1993) 3 SCC 607 Supp :
(1993) 1 SCR 245 Supp

Hon'ble Judges : Yogeshwar Dayal, J;S. P. Bharucha, J;K. Jayachandra Reddy, J;J. S. Verma, J;G. N. Ray, J

Bench : Full Bench

Final Decision : dismissed

Judgement

J.S. Verma, J.—This Election Petition calls in question the election of Shri K.R. Narayanan as the Vice-President of India. A Notification dated 17.7.1992 was issued by the Returning Officer for the election of the Vice-President of India, specifying 31.7.1992 as the last date for filing the nominations. Petitioner Kaka Joginder Singh alias Dharti Pakad and respondent Shri K.R. Narayanan filed their nomination papers; and in the scrutiny held on 1.8.1992, the nomination papers of both of them were found to be valid by the Returning Officer. Petitioner raised objection to the Validity of the nomination papers filed by the respondent, at the time of scrutiny, but the objections were rejected. These two persons alone were declared to be validly nominated candidates; and the polling was held on 19.8.1992 as a result of which the respondent, Shri K.R. Narayanan, was declared duly elected as the Vice-President of India. On 17.9.1992, this election petition was filed challenging the election.

2. The election of the returned candidate is challenged by the petitioner on two grounds, namely, (i) wrong acceptance of the nomination of the returned candidate, a ground u/s 18(1)(c) of the Presidential and Vice-Presidential

Elections Act, 1952 (called the Act); and (ii) commission of the offence of undue influence at the election, a ground u/s 18(1)(a) of the Act, by issuance of a whip by the Congress (I) Party to vote for the respondent at the election. The material part of Section 18, for the purpose of the present election petition, is as under:-

18.(1) If the Supreme Court is of opinion,-

(a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate; or

xxx xxx xxx (c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted;

the Supreme Court shall declare the election of the returned candidate to be void.

(2) For the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the Indian Penal Code.

3. The facts relevant for the aforesaid two grounds on which the election petition has been filed are now stated. The competence of the petitioner to file this election petition as a candidate is not in dispute. The only question is : Whether both or any of the grounds on which the election petition has been filed have been made out ?

4. To support the ground in Section 18(1)(c) of wrong acceptance of the nomination of the returned candidate - the respondent, the petitioner alleges that there was substantial defect in all the nomination papers of the returned candidate which required their rejection in accordance with Section 5E(3)(e) of the Act by the Returning Officer, at the time of scrutiny. It is alleged that there was a failure to comply with the requirement of Sub-sections (1) and (2) of Section 5B, inasmuch as the nomination papers of the returned candidate were not completed in the prescribed form, and no nomination paper was accompanied by a certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate is registered as an elector'. These provisions have to be read along with Rule 4 of the Presidential and Vice-Presidential Election Rules, 1974 (called 'the Rules') and Form 3 therein which prescribes the form of the nomination paper for election to the office of the Vice-President of India. Form 3 requires mention of the name of the parliamentary constituency in the electoral roll for which the candidate is registered as an elector. In the nomination papers of the respondent, the name of the parliamentary constituency in the electoral roll for which the returned candidate is shown to be registered as an elector is mentioned as 'Ottapalam (SC)'. To each of the nomination paper, to satisfy the requirement of Sub-section (2) of Section 5B, a certificate is attached, as under: -

CERTIFICATE

Certified that the name of Shri K.R. Narayanan, Kocheril House, Ward No. VIII of Uzhavoor Panchayat, Meenachil Taluk, Kottayam District, Kerala State is included in the voters list 1989 of 94 Palai Assembly Constituency, Part No. 101. The true extract of which is reproduced below:

Name	Name	of	the	voter	Sl. No.	House No.
(Kocheril)			K.R.		192	61
						Narayanan
						contd....
Age	as	on		Guardian	Name of the	Sex
					1.1.1989	
					Raman	Male 68

The age of Sri K.R. Narayanan as on 1.1.1992 is 71 (Seventy-one). Certified further that voters list 1989 of which extract has been quoted above is the latest and the current list.

Taluk Office. Meenachil.

Dated: 29-7-1992

Sd/- Electoral Registration Officer and Tahsildar- Meenachil.

5. The petitioner's contention is, that the above certificate annexed to each nomination paper of the returned candidate does not satisfy the requirement of Sub-section (2) of Section 5B, inasmuch as it is not a certified copy of the entry relating to the candidate in the electoral roll; and this certificate shows that the returned candidate was registered as an elector in the electoral roll of '94 Palai Assembly Constituency' which is not in 'Ottapalam (SC)' parliamentary constituency mentioned in the nomination paper but in 'Muvattupuzha' parliamentary constituency. The petitioner further contends that the certificate shows the 'Name of the Guardian' of the elector as 'Raman' whereas in the prescribed form the heading of the corresponding column is 'Name of the Father/Mother/Guardian/Husband'. These defects, according to the petitioner, rendered invalid all the nomination papers filed for the candidature of the respondent, and, therefore, liable to rejection.

6. The other ground taken in the election petition to challenge the election, is of 'undue influence' u/s 18(1)(a) of the Act. In view of a strong objection on behalf of the returned candidate that there are no requisite pleadings in the election petition to constitute the ground u/s 18(1)(a), it would be appropriate to quote the entire pleadings relating to this ground, on which the petitioner has relied for this purpose. The only pleading in the election petition relating to the ground in Section 18(1)(a) of the Act is in paras 10, 11 and grounds (I) and (III) in para 14 thereof, which are as under: -

10. That the returning officer unconstitutionally, illegally accepted the nomination

paper's of respondent under pressure or undue hope of profit in future, without passing any order on the written objections.

11. That the ruling party in power, competent to change the future, issued the whip in favour of returned candidate, the respondent affecting the election is violative of the provisions of the Constitution. A copy of whip is attached and marked as Annexure 'D'."

xxx xxx xxx 14. That the petitioner is approaching this Hon'ble Court on the following amongst other

GROUNDS

I. That the whip Annexure 'D' is viola-tive to Article 66 of the Constitution of India in view of Antidefection Act as the proposes of 5 M.Ps. of B.J.P. were facing disciplinary action during the period of Election hence all the political parties and their leaders made a mockery of the Election of the Vice President of India by proposing the returned candidate Shri K.R. Narayanan as a representative of Scheduled Caste candidate which is against the preamble of the Constitution of India hence it is violative of Articles 14, 21 and 38 of the Constitution of India.

xxx xxx xxx III. That all sorts of undue influences by way of whip by the Ruling Party and opposition parties have been used which amounts to corrupt practices in the Election as the 80 proposers violates Article 66 of the Constitution of India in view of Antidefection Act.

7. In reply, it was contended by Shri Soli J. Sorabjee, learned Counsel for the returned candidate that no triable issue relating to the ground of commission of the offence of undue influence contained in Section 18(1)(a) of the Act arises in the absence of the requisite pleadings for that purpose; and the ground contained in Section 18(1)(c) is not made out since the defect, if any, in the nomination papers of the returned candidate is not of a substantial character. On this basis it was contended, that the returning officer could not reject the nomination papers, as clearly provided in Sub-section (5) of Section 5E of the Act. Shri Sorabjee also submitted that the objection now taken in the election petition for raising the ground u/s 18(1)(c) of the Act was not even raised before the returning officer at the time of scrutiny, the objection taken then being merely of misdescription of the proposers and seconders, and not the returned candidate, in the nomination papers. Learned counsel submitted that the ground raised now is a clear after-thought and of no consequence since there was never any ambiguity in the identity of the returned candidate from his description given in the nomination papers, the only object of the particulars required in the nomination paper being to clearly identify the candidate and to determine his eligibility for the election. It was also submitted that such an objection, if raised, at the time of scrutiny would have enabled correction of the technical defect in the nomination papers. It was lastly urged by Shri Sorabjee that the minor defect in the nomination papers of the returned candidate can, at the most, be only a mis-description of the candidate whose identity was clear and unambiguous and,

therefore, the defect, if any, is not of a substantial character to permit rejection of the nomination papers on that ground. The learned Attorney General supported the submissions of Shri Sorabjee.

8. It was common ground before us that no evidence was required to be adduced in the election petition which could be decided on admitted facts and the documents produced by the parties, the contents of which were admitted. The arguments of both sides were, therefore, heard on that basis.

9. The ground of 'undue influence' contained in Section 18(1)(a) of the Act is taken up first for consideration. As the above-quoted provision clearly shows, to constitute the ground, the essential ingredients are : (1) Commission of the offence of undue influence at the election; and (2) Its commission by the returned candidate or by any person with the consent of the returned candidate. Thus, the offence of undue influence at the election, as defined in Section 171-C contained in Chapter IX-A of the Indian Penal Code, must have been committed; and that offence must have been committed either by the returned candidate himself or by any person with the consent of the returned candidate. Unless both these ingredients to constitute the ground u/s 18(1)(a) are pleaded and proved, this ground for declaring the election to be void cannot be made out. The entire pleading relating to this ground in the election petition has been quoted above. A bare perusal of the same is sufficient to indicate that atleast one of the two essential ingredients of the ground is not even pleaded in the election petition.

10. There is no averment anywhere in the election petition that the offence of undue influence alleged to have been committed by issuance of the whip by the Congress (I) Party was committed either by the candidate himself or by any person with the consent of the returned candidate. There is not even a whisper or casual assertion that the returned candidate was in any manner associated with, involved or instrumental in issuance of the whip by the Congress (I) Party or any other political party to its members, at the election. The letter dated 14.8.1992 (Annexure-D to the election petition) issued by the Chief Whip of the Congress (I) Party also nowhere mentions any role of the returned candidate in the issuance of the whip, while describing the returned candidate K.R. Narayanan as 'a consensus candidate', obviously meaning that he was the candidate chosen by consensus of several political parties. It may also be mentioned that the respondent in his counter-affidavit has, even without any such pleading in the election petition, expressly denied that he had any role in the issuance of the whip by the Congress (I) Party to its members. There is no rejoinder to this denial. It is significant that no other candidate had been set up by any political party and the respondent had the support of all the political parties, being the candidate chosen by consensus of the political parties. The petitioner, who was the only other candidate, obtained only one vote, as stated by him at the hearing.

11. The question whether even in such a situation the issuance of a whip by a political party can amount to undue influence does not arise for decision in the present case, on account of the absence of requisite pleadings to raise a triable

issue on the point.

12. It is sufficient to refer to a recent Constitution Bench decision of this Court in *Mithilesh Kumar Vs. R. Venkataraman and Others*, to indicate that such deficiency in pleadings in the election petition is fatal; and the ground contained in Section 18(1)(a) of the Act does not arise for consideration on merits, in such a situation. In a similar situation where the ground of undue influence contained in Section 18(1)(a) of the Act was raised by reason of the fact that a whip had been issued by the Congress (I) Party, but there was no allegation that any act amounting to undue influence was committed either by the returned candidate himself or by any other person with his consent, it was held that it was unnecessary to examine whether issuance of such a whip by any political party amounts to undue influence vitiating the election. This aspect, with reference to the earlier decisions of this Court, was considered at length therein and, therefore, it is unnecessary to reiterate the same herein. Following that decision, it must be held that the pleadings relating to the ground contained in Section 18(1)(a) do not disclose any cause of action to raise a triable issue on this point; and, therefore, the election petition, in so far as it relates to the ground contained in Section 18(1)(a), must be rejected for this reason alone.

13. The only question remaining for consideration now, is : Whether the nomination of the returned candidate was wrongly accepted, to make out the ground for setting aside the election u/s 18(1)(c) of the Act ? The provisions in the Act relevant for this ground are the following:-

5B. (1) On or before the date appointed under Clause (a) of Sub-section (1) of Section 4, each candidate shall, either in person or by any of his proposers or seconders, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, deliver to the Returning Officer at the place specified in this behalf in the public notice issued u/s 5 a nomination paper completed in the prescribed form and subscribed by the candidate as assenting to the nomination, and

(a) in the case of Presidential election, also by at least ten electors as proposers and at least ten electors as seconders;

(b) in the case of Vice-Presidential election, also by at least five electors as proposers and at least five electors as seconders:

Provided that no nomination paper shall be presented to the Returning Officer on a day which is a public holiday.

(2) Each nomination paper shall be accompanied by a certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate is registered as an elector.

xxx xxx xxx 5E. (1)....

xxx xxx xxx (3) The Returning Officer shall then examine the nomination papers

and shall decide all objections which may be made to any nomination paper and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:-

(a) ...

xxx xxx xxx (e) that there has been a failure to comply with any of the provisions of Section 5B or Section 5C.

xxx xxx xxx (5) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

xxx xxx xxx (8) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to any of the disqualifications mentioned in Section 16 of the Representation of the People Act, 1950.

14. The defect in the nomination papers of the returned candidate, on which this ground is based, has already been indicated. The undisputed fact, on the basis of the affidavits filed by both sides, is that the respondent, K.R. Narayanan, son of Raman was registered as an elector in the electoral roll of '94 Palai Assembly Constituency' which falls within Muvattupuzha parliamentary constituency and not Ottapalam (SC) parliamentary constituency. There is no inaccuracy or defect in the description of the respondent as an elector in the certificate issued by the 'Electoral Registration Officer and Tahsildar', Meenachil, which was annexed to the nomination paper when it was filed. The certificate clearly says that the name of the respondent was included in the electoral roll of '94 Palai Assembly Constituency, Part No. 101'. It further contains the 'true extract' of that electoral roll of 1989 and certifies it to be the extract from the latest and current electoral roll.

15. Section 5B(2) requires that 'a certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate is registered as an elector' shall accompany each nomination paper. The contents of the certificate, so annexed to each nomination paper, fully satisfy the requirement of 'a certified copy of the entry relating to the candidate in the electoral roll' for the assembly constituency in which the respondent was registered as an elector. The certificate does not name the parliamentary constituency and the nomination paper mentions the parliamentary constituency as Ottapalam (SC) instead of Muvattupuzha. The question is: Whether this difference is of a substantial character to warrant rejection of the nomination paper?

16. Section 13D of the Representation of the People Act, 1950 is in Part MB thereof relating to 'Electoral Rolls for Parliamentary Constituencies' and Section 15 is in Part III relating to 'Electoral Rolls for Assembly Constituencies', which

read as under: -

13D. Electoral rolls for parliamentary constituencies. - (1) The electoral roll for every parliamentary constituency, other than a parliamentary constituency in the State of Jammu and Kashmir or in a Union Territory not having a Legislative Assembly, shall consist of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency:

xxx xxx xxx 15. Electoral roll for every constituency. For every constituency there shall be an electoral roll which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of the Election Commission.

17. It is clear from the above provisions that there is no separate electoral roll for a parliamentary constituency and the electoral roll for the parliamentary constituency consists of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency. Thus, the parliamentary constituency of which '94 Palai Assembly Constituency' forms a part would be the parliamentary constituency in which the respondent was registered as an elector; and his name had to be found in the electoral roll of the assembly constituency therein in which he was so registered. The respondent, in the present case, was registered as an elector in the electoral roll of '94 Palai Assembly Constituency' as clearly mentioned in the certificate annexed to each nomination paper. There was thus no ambiguity in the description of the respondent as an elector on reading the nomination paper along with the certificate annexed to it. The mistake, however, was in mentioning the name of the corresponding parliamentary constituency for '94 Palai Assembly Constituency' as 'Ottapalam (SC)' instead of 'Muvattupuzha' in the nomination paper of the respondent. This mistake did not mislead anyone, not even the petitioner, which is evident from the fact that such an objection was not taken at the time of the scrutiny even by the petitioner, since there was no doubt in the mind of any one about the correct description of the respondent as a candidate at the election. The other mistake pointed out is, that the name of respondent's father 'Raman' is written under the column 'Name of the Guardian' when the heading of that column, according to the petitioner, should have been 'Name of the Father/Mother/Guardian/Husband'. In our opinion, this can hardly be called a defect, since the omission, if any, is in giving the full heading of that column and not in mentioning the name of respondent's father thereunder.

18. The ultimate question is: Whether this discrepancy in describing the parliamentary constituency corresponding to '94 Palai Assembly Constituency' in which the respondent was registered as an elector, and the deficiency in the heading of the column under which the name of respondent's father is written, are defects of substantial nature which required rejection of the nomination on the ground contained in Section 5E(3)(e) of the Act? We do not think so.

19. The decision of a Constitution Bench of this Court in *Karnail Singh v. Election Tribunal, Hissar*, and Ors. 10 ELR (SC) 189 holding that rejection of nomination is not permissible only for a technical defect which is not of a substantial character, has been consistently followed. In that case, the nomination paper did not record the name of the part of the electoral roll in which the name of the candidate appeared but there was no difficulty in identifying the candidate. It was held by the Election Tribunal that rejection of nomination paper on that ground was improper. This Court affirmed the view of the Election Tribunal and held thus:-

... The only defect pointed out was that the name of the sub-division was not stated therein, but on the evidence it was quite clear that there was no difficulty in identifying the candidate and the candidate himself pointed out to the Returning Officer the entry of his name in the electoral roll. The defect, in these circumstances, was a technical one and the Tribunal was perfectly right in holding that the defect was not of a substantial character and that the nomination paper should not have been rejected....

20. It is sufficient to refer to the decision in *Ram Awadesh Singh Vs. Smt. Sumitra Devi and Others*, in which the decisions of this Court starting with *Karnail Singh* are referred, indicating the object of such a provision and the nature of a substantial defect which permits rejection of the nomination paper. The ground taken there was of improper acceptance of nomination paper of the returned candidate, inasmuch as the name of the constituency in which the returned candidate was registered as an elector was wrongly mentioned in the nomination paper. The earlier decisions of this Court were referred to, and it was held that a misdescription as to the electoral roll number of the candidate or of the proposer in the nomination paper is not to be considered as a material defect in the nomination paper. It was also pointed out that the returning officer while scrutinising the nomination papers can permit the correction of any mistake therein, which indicates that every mistake in filling the nomination paper is not to be treated as substantial in nature. In our opinion, Sub-section (5) of Section 5E, which inhibits the returning officer and does not permit rejection of any nomination paper on the ground of any defect which is not of a substantial nature, expressly provides for such a situation. We have no doubt that rejection of any nomination paper of the respondent in the present case on the ground alleged by the petitioner would have been an improper rejection of the nomination paper, and in violation of Section 5E(5) of the Act. It is, therefore, erroneous to contend that the nomination papers of the respondent were wrongly accepted by the returning officer.

21. The nature of mistake or defect in the nomination papers of the respondent, viewed from a different angle, also leads to the same conclusion. The object of the particulars required to be filled in the nomination paper, in accordance with Sub-sections (1) and (2) of Section 5B of the Act read with Rule 4 and Form 3 of the Rules, is to correctly and unambiguously identify the candidate, and to indicate that the conditions of eligibility for being a candidate at the election are

satisfied. The returning officer is also required to permit correction of any discrepancies, to remove any ambiguity or misdescription. It is, therefore, clear that unless the defect in the nomination paper or the deficiency therein is of a substantial character, Section 5E(5) enjoins the returning officer not to reject the nomination paper. It is, therefore, obvious that if there be any mistake or defect in the nomination paper which is a mere misdescription of the candidate, but the mis-description is such that it does not mislead anyone, and the identity of the candidate is not in doubt to enable the returning officer to perform his duty of scrutinising the nomination paper to find out whether the candidate has been validly nominated, then the mistake, if any, is not of a substantial character.

22. The requirements for a valid nomination in Sub-sections (1) and (2) of Section 5B are : the nomination by specified number of proposers and seconders, assent of the candidate to the nomination, a certified copy of the entry in the electoral roll showing the candidate to be a registered elector, presentation of the nomination paper completed in the prescribed form within the specified time to the returning officer at the specified place, and fulfilment of the conditions of eligibility as a candidate. For this purpose, correct identification of the candidate is necessary. There is not even a remote suggestion in the present case that there was any difficulty or doubt in identifying the respondent as the candidate nominated by the nomination papers filed for his candidature, due to any mistake in describing the parliamentary constituency corresponding to '94 Palai Assembly Constituency' in which the respondent was registered as an elector or snowing the name of his father 'Raman' under the column written as 'Name of Guardian' instead of 'Name of Father/Mother/Guardian/Husband'. Even the petitioner was not misled by these defects, and it is for this reason that no such objection was taken by the petitioner to the nomination of the respondent even though the petitioner did raise objection at the time of scrutiny for other reasons.

23. The mistake in mentioning the name of the parliamentary constituency as Ottapalam (SC) instead of Muvattupuzha when the assembly constituency in which the respondent was registered as an elector therein was correctly described as '94 Palai Assembly Constituency' was at best a misnomer which misled no one, not even the petitioner, and it was, therefore, not a defect of substantial nature. The true test for determining whether a misdescription is a mere misnomer or defect of substantial nature was indicated in *Da vies v. Elsby Brothers, Ltd.* as under:

...In English law as a general principle the question is not what the writer of the document intended or meant, but what a reasonable man reading the document would understand it to mean; and that is the test which ought to be applied as a general rule in cases of misnomer - which may embrace a number of other situations apart from misnomer on a writ, for example mistake as to identity in the making of a contract. The test must be: How would a reasonable person receiving the document take it? If, in all the circumstances of the case and

looking at the document as a whole he would say to himself: "Of course it must mean me, but they have got my name wrong", then there is a case of mere misnomer. If, on the other hand, he would say: "I cannot tell from the document itself whether they mean me or not and I shall have to make inquiries", then it seems to me that one is getting beyond the realm of misnomer....

(emphasis supplied)

24. Viewed in this manner also, there can be no doubt that the mistake or defect, if any, in the nomination paper of the respondent was not of a substantial character and, therefore, it could not be a ground to permit rejection of the nomination paper in accordance with Section 5E(3)(e) of the Act. Had the defect been pointed out by anyone at the time of scrutiny, the Returning Officer would have certainly, and rightly, permitted correction of the same, since it was only a technical defect. However, no one, not even the petitioner, had any such doubt, as the identity of the respondent and his eligibility as a candidate was undisputed. For this reason, this objection was not even raised at the time of scrutiny, but only as an afterthought in the election petition.

25. The fact, however, remains that this technical defect crept into the nomination papers of the respondent in spite of the association of a galaxy of men drawn from the top echelons of several political parties in the filing of his nomination papers. The election petition does serve the purpose of revealing this discrepancy which that galaxy of men completely missed. It is a different matter that the defect is merely technical and not substantial in nature, so that it has no adverse consequence.

26. Accordingly, the ground contained in Section 18(1)(c) of the Act is also not available to challenge the validity of the election of the respondent.

27. Consequently, the election petition is dismissed. No costs.